

CHAPTER 17
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193A—17.1(79GA,ch55) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board pursuant to 2001 Iowa Acts, chapter 55, based on the unlawful practices specified in 2001 Iowa Acts, chapter 55, section 13. In addition to the procedures set forth in 2001 Iowa Acts, chapter 55, section 14, this chapter shall apply.

193A—17.2(17A,79GA,ch55) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and 2001 Iowa Acts, chapter 55, section 11, to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations shall conform to the procedures outlined in 193A—Chapter 15. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

193A—17.3(17A,79GA,ch55) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to require compliance with 2001 Iowa Acts, chapter 55, section 13, and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with 2001 Iowa Acts, chapter 55, section 13.
5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.
6. The address to which written request for hearing must be made.

193A—17.4(17A,79GA,ch55) Request for hearing.

17.4(1) Nonlicensees must request a hearing within 30 days of the date the notice is mailed if served through restricted certified mail to the last-known address, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

17.4(2) If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty and requiring compliance with 2001 Iowa Acts, chapter 55, section 13, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

17.4(3) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

17.4(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with 2001 Iowa Acts, chapter 55, section 13, at any stage of the proceeding upon mutual consent of the board.

17.4(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 193A—16.4(272C,79GA,ch55). Hearings shall be open to the public.

193A—17.5(79GA,ch55) Factors to consider. In addition to the factors set forth in 2001 Iowa Acts, chapter 55, section 14(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

1. The time lapsed since the unlawful practice occurred.
2. Evidence of reform or remedial actions.
3. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
4. Whether the violation involved an element of deception.
5. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
6. The clarity of the issue involved.
7. Whether the violation was willful and intentional.
8. Whether the nonlicensee acted in bad faith.
9. The extent to which the nonlicensee cooperated with the board.

193A—17.6(79GA,ch55) “Safe harbor” language. Persons who do not hold a CPA certificate or LPA license and firms which do not hold a CPA or LPA firm permit to practice shall not use in any statement relating to the financial affairs of a person or entity language which is conventionally used by CPAs or LPAs in reports on financial statements. Pursuant to the Iowa Accountancy Act of 2001, 2001 Iowa Acts, chapter 55, section 13(8), such persons or firms may use the following “safe harbor” language:

“I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

193A—17.7(79GA,ch55) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent order as provided in 2001 Iowa Acts, chapter 55, section 14.

These rules are intended to implement Iowa Code chapter 17A and 2001 Iowa Acts, chapter 55.

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